

§411.115

example, if a plan paid secondary for the working aged in 1991, that plan was nonconforming for 1991. If in 1994 HCFA identifies mistaken primary payments attributable to the 1991 violation, and the plan refuses to repay, it is also nonconforming for 1994.

§411.115 Notice of determination of nonconformance.

(a) *Notice to the GHP or LGHP.* (1) If HCFA determines that a GHP or an LGHP is nonconforming with respect to a particular calendar year, HCFA mails to the plan written notice of the following:

- (i) The determination.
- (ii) The basis for the determination.
- (iii) The right of the parties to request a hearing.
- (iv) An explanation of the procedure for requesting a hearing.
- (v) The tax that may be assessed by the IRS in accordance with section 5000 of the IRC.
- (vi) The fact that if none of the parties requests a hearing within 65 days from the date of its notice, the determination is binding on all parties unless it is reopened in accordance with §411.126.

(2) The notice also states that the plan must, within 30 days from the date on its notice, submit to HCFA the names and addresses of all employers and employee organizations that contributed to the plan during the calendar year for which HCFA has determined nonconformance.

(b) *Notice to contributing employers and employee organizations.* HCFA mails written notice of the determination, including all the information specified in paragraph (a)(1) of this section, to all contributing employers and employee organizations already known to HCFA or identified by the plan in accordance with paragraph (a)(2) of this section. Employers and employee organizations have 65 days from the date of their notice to request a hearing.

§411.120 Appeals.

(a) *Parties to the determination.* The parties to the determination are HCFA, the GHP or LGHP for which HCFA determined nonconformance, and any employers or employee organizations that contributed to the plan during the cal-

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endar year for which HCFA determined nonconformance.

(b) *Request for hearing.* (1) A party's request for hearing must be in writing (not in facsimile or other electronic medium) and in the manner stipulated in the notice of nonconformance; it must be filed within 65 days from the date on the notice.

(2) The request may include rationale showing why the parties believe that HCFA's determination is incorrect and supporting documentation.

(3) A request is considered filed on the date it is received by the appropriate office, as shown by the receipt date stamped on the request.

§411.121 Hearing procedures.

(a) *Nature of hearing.* (1) If any of the parties requests a hearing within 65 days from the date on the notice of the determination of nonconformance, the HCFA Administrator appoints a hearing officer.

(2) If no party files a request within the 65-day period, the initial determination of nonconformance is binding upon all parties unless it is reopened in accordance with §411.126.

(3) If more than one party requests a hearing the hearing officer conducts a single hearing in which all parties may participate.

(4) *On the record review.* Ordinarily, the hearing officer makes a decision based upon review of the data and documents on which HCFA based its determination of nonconformance and any other documentation submitted by any of the parties within 65 days from the date on the notice.

(5) *Oral hearing.* The hearing officer may provide for an oral hearing either on his or her own motion or in response to a party's request if the party demonstrates to the hearing officer's satisfaction that an oral hearing is necessary. Within 30 days of receipt of the request, the hearing officer gives all known parties written notice of the request and whether the request for oral hearing is granted.

(b) *Notice of time and place of oral hearing.* If the hearing officer provides an oral hearing, he or she gives all known parties written notice of the time and place of the hearing at least 30 days before the scheduled date.